

Plant Pest and Agriculture Commodity Certification Act

2-2112. Name of act. This act shall be known as the plant pest and agriculture commodity certification act. The authority to regulate plant pests, live plant dealers, plants and plant products and commodity certification in Kansas is vested exclusively with the secretary of agriculture.

2-2113. Definitions. As used in this act: (a) "Plant pests" include any stage of development of any insect, nematode, arachnid, or any other invertebrate animal, or any bacteria, fungus, virus, weed or any other parasitic plant or microorganism, which can injure plants or plant products.

(b) "Secretary" means the secretary of the Kansas department of agriculture, or the authorized representative of the secretary.

(c) "Plants and plant products" means trees, shrubs, grasses, vines, forage and cereal plants and all other plants; cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds, wood, lumber, grains and all other plant products.

(d) "Location" means any grounds or premises on or in which live plants are propagated, or grown, or from which live plants are removed for sale, or any grounds or premises on or in which live plants are being fumigated, treated, packed, stored, or offered for sale.

(e) "Live plant dealer" means any person, unless excluded by rules and regulations of the secretary, who:

(1) Grows live plants for sale or distribution;

(2) buys or obtains live plants for the purpose of reselling or reshipping within this state;

(3) plants, transplants or moves live plants from place to place within the state with the intent to plant such live plants for others and receives compensation for the live plants, for the planting of such live plants or for both live plants and plantings; or

(4) gives live plants as a premium or for advertising purposes.

(f) "Person" means a corporation, company, society, association, partnership, governmental agency and any individual or combination of individuals.

(g) "Permit" means a document issued or authorized by the secretary to provide for the movement of regulated articles to restricted destinations for limited handling, utilization, or processing.

(h) "Host" means any plant or plant product upon which a plant pest is dependent for completion of any portion of its life cycle.

(i) "Regulated article" means any host or any article of any character as described in a quarantine or regulation carrying or being capable of carrying the plant pest against which the quarantine or regulation is directed.

(j) "Live plant" means any living plant, cultivated or wild, or any part thereof that can be planted or propagated unless specifically exempted by the rules or regulations of the secretary.

(k) "Quarantine pest" means a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

(l) "Regulated nonquarantine pest" means a nonquarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated.

(m) "Official control" means the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated nonquarantine pest.

(n) "Regulated area" means an area into which, within which and/or from which plants, plant products and other regulated articles are subjected to phytosanitary regulations or procedures in order to prevent the introduction and/or spread, or both, of quarantine pests or to limit the economic impact of regulated nonquarantine pests.

(o) "Bee" means a honey-producing insect of the genus *Apis* including all life stages of the insect.

(p) "Beekeeping equipment" means all hives, supers, frames or other devices used in the rearing or manipulation of bees or their brood.

(q) "Bee pest" means any infectious, contagious or communicable disease or harmful parasite or insects affecting honey bees or their brood.

2-2114. Secretary's duties. The secretary, either independently, or in cooperation with counties, cities, other political subdivisions of the state, federal agencies, agencies of other states or private entities may enter into contracts and agreements and may carry out official control operations or measures to locate, and to suppress, control, eradicate, prevent, or retard the spread of, any plant pests.

2-2115. Inspections by secretary. To effectuate the purposes of this act, the secretary shall have the right to enter and inspect any property in this state, except private dwellings; or, to stop and inspect any means of conveyance moving within this state, upon probable cause to believe it contains or carries any plant pest or other article subject to this act.

2-2116. Disposition of plant pests. Wherever the secretary finds a plant, plant product or other regulated article that is infested by a plant pest or finds that a plant pest exists on any premises in this state or is in transit in this state, the secretary, upon giving notice to the owner or an agent of the owner in possession thereof, may seize, quarantine, treat, or otherwise dispose of such plant pest in such manner as the secretary deems necessary to suppress, control, eradicate, or prevent or retard the spread of such plant pest, or the secretary may order such owner or agent to so treat or otherwise dispose of the such plant pest.

2-2117. Quarantines; notice and hearings. The secretary is authorized to quarantine this state or any portion thereof when the secretary determines that such action is necessary to prevent or retard the spread of a plant pest and to quarantine any other state or portion thereof whenever the secretary determines that a plant pest exists therein and that such action is necessary to prevent or retard its spread into this state. Before promulgating the determination that a quarantine is necessary, the secretary, after due notice to interested parties, shall hold a public hearing at which any interested party may appear and be heard either in person or by attorney. The secretary may impose a temporary quarantine for a period not to exceed 90 days during which time a public hearing, as provided in this section, shall be held if it appears that a quarantine for more than the 90-day period will be necessary to prevent or retard the spread of the plant pest. The secretary may limit the application of the quarantine to the infested portion of the quarantined area and appropriate environs, to be known as the regulated area, and, without further hearing, may extend the regulated area to include additional portions of the quarantined area. Following the establishment of the quarantine, no person shall move the plant pest against which the quarantine is established or move any regulated article described in the quarantine, within, from, into or through this state contrary to the quarantine promulgated by the secretary. The quarantine may restrict the movement of the plant pest and any regulated articles from the quarantined or regulated area in this state into or through other parts of this state or other states and from the quarantined or regulated area in other states into or through this state. The secretary shall impose such inspection, disinfection, certification or permit and other requirements as the secretary shall deem necessary to effectuate the purposes of this act. The secretary is authorized to establish regulations defining pest freedom standards for live plants, plants and plant products or other regulated articles that pose risk of moving plant pests that may cause economic or environmental harm.

2-2118. Inspections; fees. Upon request the secretary may provide inspection services for any person who owns or possesses plants or plant products or for certification purposes of regulated articles intended for shipment interstate or internationally. Upon payment of the appropriate fee as established by rule and regulation and as inspection personnel are available, the inspection shall be conducted and a report or certificate setting forth the inspection results shall be issued if requested. Inspection fees shall not exceed \$30 per hour. Mileage incurred shall also be paid by the person requesting the inspection at the rate established by regulation. If certificate is requested an additional fee not to exceed \$50 plus any fee amount charged by the United States government for the acquisition of federal certificates shall be assessed. The fees for such inspection and certificate in effect on the day preceding the effective date of this act shall continue in effect until the secretary adopts rules and regulations fixing a different fee therefor under this subsection. In any case where any intended receiving state or country requires or authorizes the certification of plants or plant products, bees or beekeeping equipment or other regulated articles to be based on origin, special handling, treatment or any other procedure in addition to or in lieu of actual visual inspection of such articles, the secretary may provide such certification. The secretary may refuse to perform any inspection if the regulated article to be inspected is found to be in such condition that it cannot be adequately inspected or the environs in which the regulated article is located present a danger to the health and safety of the inspection personnel.

History: L. 1965, ch. 6, § 7; L. 1972, ch. 6, § 1; L. 1976, ch. 8, § 1; L. 1982, ch. 4, § 5; L. 1996, ch. 94, § 1; L. 2002, ch. 91, § 7; L. 2006, ch. 78, § 1; July 1.

2-2120. Live plant dealer's license; application fees; sale of live plants, conditions. Every live plant dealer, before selling or offering for sale or delivering any live plants in this state, shall procure from the secretary a live plant dealer's license for each location and vehicle from which the live plant dealer offers such live plants for sale. Application for such license shall be made on a form furnished by the secretary, and the fee for each application shall be fixed by rules and regulations adopted by the secretary, except that such fee shall not exceed \$60, and shall not apply to live plant dealers whose total annual retail live plant sales are less than \$10,000. The application fee in effect on the day preceding the effective date of this act shall continue in effect until the secretary adopts rules and regulations fixing a different application fee under this section. The dealer's license shall expire on January 31, following date of issue, except that all valid certificates of nursery inspection and nursery dealer licenses issued by the secretary that are scheduled to expire in 2002 shall remain valid until January 31, 2003. A live plant dealer may sell only live plants which are in compliance with all quarantines and regulated nonquarantine pest freedom standards established by the secretary, or live plants accompanied by a valid certificate of inspection of a federal inspector or inspector of another state, stating that such live plants comply with all applicable quarantines and regulated nonquarantine pest freedom standards. Except where restricted by a quarantine, live plants transplanted on one contiguous property are exempt from the provisions of this act.

2-2122. Revocation of live plant dealer license; notice and hearing. If it is found that any live plant dealer license issued by the secretary is being used in connection with live plants which do not meet the quarantines and regulated nonquarantine pest freedom standards established by the secretary, or other precautionary measures prescribed by the secretary under the provisions of this act and amendments thereto, or if it is found that any live plant dealer's license is being used by a person other than the one to whom it was issued, the secretary may require the owner of the license to appear for a hearing, on a specified date, to be conducted in accordance with the provisions of the Kansas administrative procedure act to show cause why the license should not be revoked. If, after such hearing, the secretary finds that such license has been wrongfully used in one or more of the ways specified in this section, or if the owner of such license fails to appear at such hearing, the secretary may issue an order revoking such license.

2-2123. Unlawful to ship live plants or other articles not in compliance with act; tags or labels; electronic or mail order sales. It shall be unlawful to deliver, transport or ship into or within this state live plants or other regulated articles which are not in compliance with the provisions of this act. Any such live plants intended for resale and any such live plants transported by public carrier shall have attached to each quantity or package a tag or label on which shall appear a copy of a valid document issued by the proper official of the state, territory, district or country from which it was shipped, sent, or brought showing that such live plants are in compliance with Kansas quarantines and regulated nonquarantine pest freedom standards. Live plants brought into the state

under a document, as required by this section, may be sold and moved under a valid Kansas live plant dealer license, and this shall not preclude inspection by the secretary at any time within the state. Electronic or mail order sales of live plants are subject to the provisions of this act. All regulated articles shipped or moved into Kansas shall be accompanied by valid documentation issued by the proper official of the state, territory, district or county [country] from which it was shipped or moved showing that the regulated article is in compliance with Kansas quarantines or pest freedom standards, or both, established for such article.

2-2124. Violations. It shall be a violation of this act for any person: (a) To sell, barter, offer for sale, or move, transport, deliver, ship or offer for shipment into or within this state any plant pests in any living stage without first obtaining approval for such shipment from the secretary;

(b) to hinder or prevent the secretary from carrying out his or her duties under this act;

(c) to fail to carry out the treatment or destruction of any plant pest or regulated article in accordance with official notification from the secretary;

(d) to sell, transport, deliver, distribute, offer or expose for sale live plants which are not in compliance with the provisions of this act;

(e) to use an invalid or revoked certificate of inspection, or live plant dealer license, in the sale or distribution of live plants;

(f) to fail to comply with any of the provisions of this act, or the rules and regulations promulgated hereunder; and

(g) to knowingly move any regulated article into this state from a quarantined area of any other state when such article has not been treated or handled as provided by the requirements of said quarantine at the point of origin of such article.

2-2125. Penalties for violations. (a) Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25 nor more than \$500.

(b) The secretary may assess a civil penalty against any person who violates or fails to comply with the requirements of this act of not less than \$100 nor more than \$1,000 per offense. In the case of a continuing offense, each day the violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Such assessment shall be made in accordance with the Kansas administrative procedure act.

2-2126. Rules and regulations. The secretary shall promulgate, amend and repeal such rules and regulations as, in the discretion of the secretary, are necessary for the efficient execution of the provisions of this act.

2-2127. Invalidity of part. If any clause, sentence, paragraph, section, or part of this act shall for any reason be declared unconstitutional by any court of competent jurisdiction it shall not affect the validity or constitutionality of any remaining sentence, clause, paragraph, section or part of this act.

2-2128. Disposition of moneys received; entomology fee fund. The secretary shall remit all moneys received by or for the secretary under article 21 of chapter 2 of Kansas Statutes Annotated, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the entomology fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

2-2129. Plant pest emergency response fund. (a) There is hereby created a plant pest emergency response fund in the state treasury. Such fund shall be funded by a fee assessed in addition to the fees assessed a live plant dealer under article 21 of chapter 2 of the Kansas Statutes Annotated. The additional fee shall be fixed by rule and regulation promulgated by the secretary of agriculture, except that such additional fee shall not exceed \$5 annually on each live plant dealer license. The secretary is authorized and empowered to collect the fees provided in this section. When the total amount of fees deposited in the fund is equal to or exceeds \$15,000, the secretary shall not collect any such fees as provided in this section. When expenditures made from the fund result in the total amount of the fees deposited in the fund to be less than \$15,000, the secretary may resume the assessment and collection of such fees as provided in this section.

(b) The secretary is authorized and empowered to make expenditures from the plant pest emergency response fund and that in the discretion of the secretary mitigate pests that have been identified by the secretary as high risk pests having the potential to damage agriculture, horticulture or the environment. Such expenditures may include the costs of enforcement to protect against high risk pests identified by the secretary. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a designee of the secretary.

(c) The plant pest emergency response fund shall be a fund separate and distinct from the entomology fee fund referred to in K.S.A. 2-2128, and amendments thereto.

(d) The provisions of this section shall be part of and supplemental to this act.

2-2135. Pest control compact, enactment. The pest control compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

PEST CONTROL COMPACT

Article I. Findings

The party states find that:

- (a) In the absence of the higher degree of cooperation among them possible under this compact, the annual loss of approximately 137 billion dollars from the depredations of pests is virtually certain to continue, if not to increase.
- (b) Because of the varying climatic, geographic and economic factors, each state may be affected differently by particular species of pests; but all states share the inability to protect themselves fully against those pests which present serious dangers to them.
- (c) The migratory character of pest infestations makes it necessary for states both adjacent to and distant from one another, to complement each other's activities when faced with conditions of infestation and reinfestation.
- (d) While every state is seriously affected by a substantial number of pests, and every state is susceptible to infestation by many species of pests not now causing damage to its crop and plant life and products, the fact that relatively few species of pests present equal danger to or are of interest to all states makes the establishment and operation of an insurance fund, from which individual states may obtain financial support for pest control programs of benefit to them in other states and to which they may contribute in accordance with their relative interest, the most equitable means of financing cooperative pest eradication and control programs.

Article II. Definitions

As used in this compact, unless the context clearly requires a different construction:

- (a) "State" means a state, territory, or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.
- (b) "Requesting state" means a state which invokes the procedures of the compact to secure the undertaking or intensification of measures to control or eradicate one or more pests within one or more other states.
- (c) "Responding state" means a state requested to undertake or intensify the measures referred to in subdivision (b) of this article.
- (d) "Pest" means any invertebrate animal, pathogen, parasitic plant or similar or allied organism which can cause disease or damage in any crops, trees, shrubs, grasses or other plants of substantial value.
- (e) "Insurance fund" means the pest control insurance fund established pursuant to this compact.
- (f) "Governing board" means the administrators of this compact representing all of the party states when such administrators are acting as a body in pursuance of authority vested in them by this compact.
- (g) "Executive committee" means the committee established pursuant to Article V(e), of this compact.

Article III. The Insurance Fund

There is hereby established the pest control insurance fund for the purpose of financing other than normal pest control operations which states may be called upon to engage in pursuant to this compact. The insurance fund shall contain moneys appropriated to it by the party states and any donations and grants accepted by it. All appropriations, except as conditioned by the rights and obligations of party states expressly set forth in this compact, shall be unconditional and may not be restricted by the appropriating state to use in the control of any specified pest or pests. Donations and grants may be conditional or unconditional, provided that the insurance fund shall not accept any donation or grant whose terms are inconsistent with any provision of this compact.

Article IV. The Insurance Fund, Internal Operations and Management

- (a) The insurance fund shall be administered by a governing board and executive committee as hereinafter provided. The actions of the governing board and the executive committee pursuant to this compact shall be deemed the actions of the insurance fund.
- (b) The members of the governing board shall be entitled to one vote on such board. No action of the governing board shall be binding unless taken at a meeting at which a majority of the total number of votes on the governing board is cast in favor thereof. Action of the governing board shall be only at a meeting at which a majority of the members are present.
- (c) The insurance fund shall have a seal which may be employed as an official symbol and which may be affixed to documents and otherwise used as the governing board may provide.
- (d) The governing board shall elect annually, from among its members, a chairman, a vice chairman, a secretary and a treasurer. The chairman may not succeed himself. The governing board may appoint an executive director and fix his duties and his compensation, if any. Such executive director shall serve at the pleasure of the governing board. The governing board shall make provision for the bonding of such of the officers and employees of the insurance fund as may be appropriate.
- (e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director, or if there be no executive director, the chairman, in accordance with such procedures as the bylaws may provide, shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the insurance fund and shall fix the duties and compensation of such personnel. The governing board in its bylaws shall provide for the personnel policies and programs of the insurance fund.
- (f) The insurance fund may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(g) The insurance fund may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize and dispose of the same. Any donation, gift or grant accepted by the governing board pursuant to this paragraph or services borrowed pursuant to paragraph (f) of this Article shall be reported in the annual report of the insurance fund. Such report shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender.

(h) The governing board shall adopt bylaws for the conduct of the business of the insurance fund and shall have the power to amend and rescind these bylaws. The insurance fund shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(i) The insurance fund annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. The insurance fund may make such additional reports as it may deem desirable.

(j) In addition to the powers and duties specifically authorized and imposed, the insurance fund may do such other things as are necessary and incidental to the conduct of its affairs pursuant to this compact.

Article V.

Compact and Insurance Fund Administration

(a) In each party state there shall be a compact administrator, who shall be selected and serve in such manner as the laws of his state may provide, and who shall:

- (1) Assist in the coordination of activities pursuant to the compact in his state; and
- (2) represent his state on the governing board of the insurance fund.

(b) If the laws of the United States specifically so provide, or if administrative provision is made therefore within the federal government, the United States may be represented on the governing board of the insurance fund by not to exceed three representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, but no such representative shall have a vote on the governing board or the executive committee thereof.

(c) The governing board shall meet at least once each year for the purpose of determining policies and procedures in the administration of the insurance fund and, consistent with the provisions of the compact, supervising and giving direction to the expenditure of moneys from the insurance fund. Additional meetings of the governing board shall be held on call of the chairman, the executive committee or a majority of the membership of the governing board.

(d) At such times as it may be meeting, the governing board shall pass upon applications for assistance from the insurance fund and authorize disbursements therefrom. When the governing board is not in session, the executive committee thereof shall act as agent of the governing board, with full authority to act for it in passing upon such applications.

(e) The executive committee shall be composed of the chairman of the governing board and four additional members of the governing board chosen by it so that there shall be one member representing each of four geographic groupings of party states. The governing board shall make such geographic groupings. If there is representation of the United States on the governing board, one such representative may meet with the executive committee. The chairman of the governing board shall be chairman of the executive committee. No action of the executive committee shall be binding unless taken at a meeting at which at least four members of such committee are present and vote in favor thereof. Necessary expenses of each of the five members of the executive committee incurred in attending meetings of such committee, when not held at the same time and place as a meeting of the governing board, shall be charges against the insurance fund.

Article VI.

Assistance and Reimbursement

(a) Each party state pledges to each other party state that it will employ its best efforts to eradicate, or control within the strictest practicable limits, any and all pests. It is recognized that performance of this responsibility involves:

(1) The maintenance of pest control and eradication activities of interstate significance by a party state at a level that would be reasonable for its own protection in the absence of this compact.

(2) The meeting of emergency outbreaks or infestations of interstate significance to no less an extent than would have been done in the absence of this compact.

(b) Whenever a party state is threatened by a pest not present within its borders but present within another party state, or whenever a party state is undertaking or engaged in activities for the control or eradication of a pest or pests, and finds that such activities are or would be impracticable or substantially more difficult of success by reason of failure of another party state to cope with infestation or threatened infestation, that state may request the governing board to authorize expenditures from the insurance fund for eradication or control measures to be taken by one or more of such other party states at a level sufficient to prevent, or to reduce to the greatest practicable extent, infestation or reinfestation of the requesting state. Upon such authorization the responding state or states shall take or increase such eradication or control measures as may be warranted. A responding state shall use moneys available from the insurance fund expeditiously and efficiently to assist in affording the protection requested.

(c) In order to apply for expenditures from the insurance fund, a requesting state shall submit the following in writing:

(1) A detailed statement of the circumstances which occasion the request for the invoking of the compact.

(2) Evidence that the pest on account of whose eradication or control assistance is requested constitutes a danger to an agricultural or forest crop, product, tree, shrub, grass or other plant having a substantial value to the requesting state.

(3) A statement of the extent of the present and projected program of the requesting state and its subdivisions, including full information as to the legal authority for the conduct of such program or programs and the expenditures being made or budgeted therefore, in connection with the eradication, control or prevention of introduction of the pest concerned.

(4) Proof that the expenditures being made or budgeted as detailed in item 3 do not constitute a reduction of the effort for the control or eradication of the pest concerned or, if there is a reduction, the reasons why the level of program detailed in item 3 constitutes a normal level of pest control activity.

(5) A declaration as to whether, to the best of its knowledge and belief, the conditions which in its view occasion the invoking of the compact in the particular instance can be abated by a program undertaken with the aid of moneys from the insurance fund in one year or less or whether the request is for an installment in a program which is likely to continue for a longer period of time.

(6) Such other information as the governing board may require consistent with the provisions of this compact.

(d) The governing board or executive committee shall give due notice of any meeting at which an application for assistance from the insurance fund is to be considered. Such notice shall be given to the compact administrator of each party state and to such other officers and agencies as may be designated by the laws of the party states. The requesting state and any other party state shall be entitled to be represented and present evidence and argument at such meeting.

(e) Upon the submission as required by paragraph (c) of this Article and such other information as it may have or acquire, and upon determining that an expenditure of funds is within the purposes of this compact and justified thereby, the governing board or executive committee shall authorize support of the program. The governing board or executive committee may meet at any time or place for the purpose of receiving and considering an application. Any and all determinations of the governing board or executive committee, with respect to an application, together with the reasons therefore shall be recorded and subscribed in such manner as to show and preserve the votes of the individual members thereof.

(f) A requesting state which is dissatisfied with a determination of the executive committee shall upon notice in writing given within twenty days of the determination with which it is dissatisfied, be entitled to receive a review thereof at the next meeting of the governing board. Determinations of the executive committee shall be reviewable only by the governing board at one of its regular meetings, or at a special meeting held in such manner as the governing board may authorize.

(g) Responding states required to undertake or increase measures pursuant to this compact may receive moneys from the insurance fund, either at the time or times when such state incurs expenditures on account of such measures, or as reimbursement for expenses incurred and chargeable to the insurance fund. The governing board shall adopt and, from time to time, may amend or revise procedures for submission of claims upon it and for payment thereof.

(h) Before authorizing the expenditure of moneys from the insurance fund pursuant to an application of a requesting state, the insurance fund shall ascertain the extent and nature of any timely assistance or participation which may be available from the federal government and shall request the appropriate agency or agencies of the federal government for such assistance and participation.

(i) The insurance fund may negotiate and execute a memorandum of understanding or other appropriate instrument defining the extent and degree of assistance or participation between and among the insurance fund, cooperating federal agencies, states and any other entities concerned.

Article VII.

Advisory and Technical Committees

The governing board may establish advisory and technical committees composed of state, local, and federal officials and private persons to advise it with respect to any one or more of its functions. Any such advisory or technical committee, or any member or members thereof may meet with and participate in its deliberations upon request of the governing board or executive committee. An advisory or technical committee may furnish information and recommendations with respect to any application for assistance from the insurance fund being considered by such board or committee and the board or committee may receive and consider the same: Provided, That any participant in a meeting of the governing board or executive committee held pursuant to Article VI(d) of the compact shall be entitled to know the substance of any such information and recommendations, at the time of the meeting if made prior thereto or as a part thereof or, if made thereafter, no later than the time at which the governing board or executive committee makes its disposition of the application.

Article VIII.

Relations with Nonparty Jurisdictions

(a) A party state may make application for assistance from the insurance fund in respect of a pest in a nonparty state. Such application shall be considered and disposed of by the governing board or executive committee in the same manner as an application with respect to a pest within a party state, except as provided in this Article.

(b) At or in connection with any meeting of the governing board or executive committee held pursuant to Article VI(d) of this compact a nonparty state shall be entitled to appear, participate and receive information only to such extent as the governing board or executive committee may provide. A nonparty state shall not be entitled to review of any determination made by the executive committee.

(c) The governing board or executive committee shall authorize expenditures from the insurance fund to be made in a nonparty state only after determining that the conditions in such state and the value of such expenditures to the party states as a whole justify them. The governing board or executive committee may set any conditions which it deems appropriate with respect to the expenditure of moneys from the insurance fund in a nonparty state and may enter into such agreement or agreements with nonparty states and other jurisdictions or entities as it may deem necessary or appropriate to protect the interests of the insurance fund with respect to expenditures and activities outside of party states.

Article IX.

Finance

(a) The insurance fund shall submit to the executive head or designated officer or officers of each party state a budget for the insurance fund for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the budgets shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The requests for appropriations shall be apportioned among the party states as follows: one-tenth of the total budget in equal shares and the remainder in proportion to the value of agricultural and forest crops and products, excluding animals and animal products, produced in each party state. In determining the value of such crops and products the insurance fund may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the budgets and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of products.

(c) The financial assets of the insurance fund shall be maintained in two accounts to be designated respectively as the "operating account" and the "claims account". The operating account shall consist only of those assets necessary for the administration of the insurance fund during the next ensuing two-year period. The claims account shall contain all moneys not included in the operating account and shall not exceed the amount reasonably estimated to be sufficient to pay all legitimate claims on the insurance fund for a period of three years. At any time when the claims account has reached its maximum limit or would reach its maximum limit by the addition of moneys requested for appropriation by the party states, the governing board shall reduce its budget requests on a pro rata basis in such manner as to keep the claims account within such maximum limit. Any moneys in the claims account by virtue of conditional donations, grants or gifts shall be included in calculations made pursuant to this paragraph only to the extent that such moneys are available to meet demands arising out of claims.

(d) The insurance fund shall not pledge the credit of any party state. The insurance fund may meet any of its obligations in whole or in part with moneys available to it under Article IV(g) of this compact, provided that the governing board takes specific action setting aside such moneys prior to incurring any obligation to be met in whole or in part in such manner. Except where the insurance fund makes use of moneys available to it under Article IV(g) hereof, the insurance fund shall not incur any obligation prior to the allotment of moneys by the party states adequate to meet the same.

(e) The insurance fund shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the insurance fund shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the insurance fund shall be audited yearly by a certified or licensed public accountant and report of the audit shall be included in and become part of the annual report of the insurance fund.

(f) The accounts of the insurance fund shall be open at any reasonable time for inspection by duly authorized officers of the party states and by any persons authorized by the insurance fund.

Article X.

Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any five or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two years after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article XI.

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

2-2136. Same; state agency cooperation with insurance fund. Consistent with law and within available appropriations, the departments, agencies, and officers of this state may cooperate with the insurance fund established by the pest control compact.

2-2137. Same; bylaws filed with secretary of agriculture. Pursuant to Article IV(h) of the compact, copies of bylaws and amendments thereto must be filed with the secretary of agriculture.

2-2138. Same; compact administrator, duties. The compact administrator for this state shall be the secretary of agriculture or the secretary's designee. The duties of the compact administrator shall be deemed a regular part of the duties of this office.

2-2139. Same; application for assistance from insurance fund. Within the meaning of Article VI(b) or VIII(a), a request or application for assistance from the insurance fund may be made by the secretary of agriculture whenever in their judgment the conditions qualifying this state for such assistance exist and it would be in the best interest of this state to make such request.

2-2140. Same; credit of payments received by state. The department, agency or officer expending or becoming liable for an expenditure on account of a control or an eradication program undertaken or intensified pursuant to the compact shall have credited to an operating fund in the state treasury the amount or amounts of any payments made to this state to defray the cost of such program, or any part thereof, or as reimbursement thereof.

2-2141. Same; executive head. As used in the compact, with reference to this state, the term "executive head" shall mean the governor.

Kansas Administrative Regulations

ARTICLE 15. Plants and Plant Products

K.A.R. 4-15-4. Live plant definition: exclusions. The following shall be excluded from the definition of live plant set forth in K.S.A. 2-2113, and amendments thereto: (a) Field and forage crops;

- (b) seeds and sets of any kind;
- (c) cut flowers and cut greenery not used for propagation;
- (d) fruits and vegetables used for food or feed; and
- (e) aquatic plants used in indoor aquariums.

K.A.R. 4-15-5. Live plant dealer license fee. (a) The fee for a live plant dealer license shall be \$50.

(b) Except as specified in K.A.R. 4-15-7, each person offering any live plants for advertising or promotional purposes and not for sale shall obtain a single license, which shall cover all the locations from which that person may offer live plants.

K.A.R. 4-15-6. Plant pest emergency response fund fee. In addition to the license fee specified in K.A.R. 4-15-5, each live plant dealer shall pay a fee of \$5, which shall be deposited in the plant pest emergency response fund. No live plant dealer shall pay this additional fee in the licensing year following any fiscal year in which the fee balance equals or exceeds \$15,000.

K.A.R. 4-15-7. Live plant dealer licensing exemptions. Each live plant dealer who engages primarily in a retail business and whose annual live plant retail sales are less than \$10,000 shall be exempt from the licensing fee requirements, but shall be subject to all other licensing requirements, including the pest freedom standards established in K.A.R. 4-15-10 and the emergency response fee fund established by K.A.R. 4-15-6.

K.A.R. 4-15-8. Fees for the inspection of live plants, plants and plant products, bees, beekeeping equipment, and regulated articles. (a) Whenever any person who owns or possesses live plants, plants and plant products, bees, beekeeping equipment, or regulated articles requests an inspection for any reason, that person shall pay an inspection fee of \$30 per hour plus mileage expenses.

(b) The inspection fee for the time of the inspection shall be calculated from the inspector's time of arrival at the inspection site. A minimum of one hour of inspection time shall be charged. Each inspection that is longer than one hour shall be rounded to the nearest quarter hour. Lunch and break periods shall be excluded from the inspection fee.

(c) Each person requesting an inspection shall pay the mileage fee calculated to the inspection site from one of the following locations, whichever distance is the shortest:

- (1) The inspector's official station;
- (2) the last location at which a requested inspection was conducted; or
- (3) the last location at which the inspector incurred subsistence or lodging expenses.

(d) The person for which the last requested inspection is performed on any day shall be charged for the mileage for the return trip to the inspector's official station or to the location at which the inspector incurs subsistence or lodging expenses, whichever is closer.

(e) Mileage shall be calculated by using either the actual miles driven by the inspector or the appropriate number from the Kansas department of transportation's official distance chart, whichever is less. The rate per mile shall be the private vehicle mileage reimbursement rate fixed by the secretary of administration for the type of vehicle used by the inspector on the day on which the inspection was performed.

(f) Each person requesting a seed wash analysis for bunt and smut fungi shall pay a fee of \$50 per sample.

K.A.R. 4-15-9. Fees for the certification of live plants, plants and plant products, bees, beekeeping equipment, and regulated articles. (a) If a state certificate is required for the entry of an inspected article into another state or a foreign country, the person needing certification shall pay one or more of the following, as applicable:

- (1) \$20 for a certificate for a commodity or article certified for domestic shipment;
 - (2) \$50 for a certificate for a commodity or article certified for international shipment; or
 - (3) 15 cents for each bale tag provided to satisfy a weed-free forage requirement.
- (b) If a federal certificate is also required for the entry of an inspected article into another state or a foreign country, the associated fee shall be added to the amount specified in subsection (a). (Authorized by and implementing K.S.A. 2005 Supp. 2-2118, as amended by L. 2006, ch. 78, sec. 1, and 2-2126; effective Oct. 18, 2002; amended Feb. 2, 2007.)

K.A.R. 4-15-10. Pest freedom standards. (a) As used in this regulation, “incidence” shall mean the prevalence of a plant pest on a group of plants, expressed as the percentage of plants affected. For insects and arachnids, the incidence tolerance limit shall include all visible life stages. The word “damage” shall mean the degree of harm to a plant part caused by a plant pest, expressed as the percentage of plant tissue damaged.

(b) All plant pests shall be prohibited entry into Kansas except as follows. Infestation levels for the pests listed below shall not exceed the tolerance limits shown for each pest.

(1) INSECTS and ARACHNIDS

Common Name	Scientific Name	Tolerance Limits (maximum)	
		Incidence	Damage
an aphid	<i>Capitophorus</i> spp.	< 75%	< 25%
an aphid	<i>Myzus hemerocallis</i>	< 75%	< 25%
ash plant bug	<i>Tripodostepes amoenus</i>	< 75%	< 25%
ash/lilac borer	<i>Podosesia syringae</i>	< 1%	-
bagworm	<i>Thyridopteryx ephemeraeformis</i>	< 75%	< 25%
Banks grass mite	<i>Oligonychus pratensis</i>	< 25%	-
cotton/melon aphid	<i>Aphis gossypii</i>	< 75%	< 25%
dark-winged fungus gnats	Family <i>Sciaridae</i>	< 75%	< 25%
elm leaf beetle	<i>Pyrrhalta luteola</i>	< 75%	< 25%
euonymus scale	<i>Unaspis euonymi</i>	< 1%	-
European pine shoot moth	<i>Rhyacionia buoliana</i>	< 1%	-
fall webworm	<i>Hyphantria cunea</i>	< 75%	< 25%
flat-headed apple tree borer	<i>Chrysobothris femorata</i>	< 1%	-
Fletcher scale	<i>Lecanium fletcheri</i>	< 75%	-
fungus gnats	Family <i>Mycetophilidae</i>	< 75%	< 25%
foxglove aphid	<i>Aulacorthum solani</i>	< 75%	< 25%
green peach aphid	<i>Myzus persicae</i>	< 75%	< 25%
greenhouse whitefly	<i>Trialeurodes vaporariorum</i>	< 25%	-
hawthorn lace bug	<i>Corythucha cydoniae</i>	< 75%	< 25%
honey locust borer	<i>Agrius difficilis</i>	< 1%	-
honeysuckle aphid	<i>Hyadaphis tataricae</i>	< 75%	< 25%
iris borer	<i>Macronoctua onusta</i>	< 1%	-
Japanese beetle	<i>Popillia japonica</i>	Certification under the U.S. domestic Japanese beetle harmonization plan, September 5, 2000, published by the national plant board, shall be required.	
locust borer	<i>Megacyllene robiniae</i>	< 1%	-
maple bladder gall mite	<i>Vasates quadripedes</i>	< 75%	< 25%
mimosa webworm	<i>Homadula anisocentra</i>	< 75%	< 25%
oak red mite	<i>Oligonychus bicolor</i>	< 75%	< 25%
obscure scale	<i>Melanaspis obscura</i>	< 1%	-
oystershell scale	<i>Lepidosaphes ulmi</i>	< 1%	-
painted hickory borer	<i>Megacyllene caryae</i>	< 1%	-
peach tree borer	<i>Synanthedon exitiosa</i>	< 1%	-
pine bark adelgid	<i>Pineus strobi</i>	< 1%	-
pine needle scale	<i>Chionaspis pinifoliae</i>	< 1%	-
pine tortoise scale	<i>Toumeyella parvicornis</i>	< 1%	-
potato aphid	<i>Macrosiphum euphorbiae</i>	< 75%	< 25%
round-headed apple tree borer	<i>Saperda candida</i>	< 1%	-
shore flies	Family <i>Ephydriidae</i>	< 75%	< 25%
spirea aphid	<i>Aphis spiraeicola</i>	< 75%	< 25%
spruce spider mite	<i>Oligonychus ununguis</i>	< 75%	< 25%
sweet potato whitefly	<i>Bemisia tabaci</i>	< 25%	-
tobacco thrips	<i>Frankliniella fusca</i>	< 75%	< 25%
two-spotted spider mite	<i>Tetranychus urticae</i>	< 25%	-
water lily aphid	<i>Rhopalosiphum nymphaeae</i>	< 75%	< 25%
western flower thrips	<i>Frankliniella occidentalis</i>	< 75%	< 25%
winged euonymus scale	<i>Lepidosaphes yanagicola</i>	< 1%	-

(2) DISEASES and NEMATODES

Common Name	Scientific Name	Tolerance Limits (maximum)	
		Incidence	Damage
apple scab	<i>Venturia inaequalis</i>	< 75%	< 25%
bacterial wilt of geranium	<i>Xanthomonas campestris</i> pv. <i>pelargonii</i>	< 1%	-
black knot	<i>Apiosporina morbosa</i>	< 25%	-
black spot of rose	<i>Diplocarpon rosae</i>	< 75%	< 25%
brown spot of pine	<i>Scirrhia acicola</i>	< 75%	< 25%
cedar-apple rust	<i>Gymnosporangium</i> <i>juniperi-virginianae</i>	< 75%	< 25%
cedar-quince rust	<i>Gymnosporangium clavipes</i>	< 1%	-
crown gall	<i>Agrobacterium tumefaciens</i>	< 1%	-
Cyclaneusma needle cast	<i>Cyclaneusma minus</i> and <i>C. niveus</i>	< 75%	< 25%

Diplodia tip blight	<i>Sphaeropsis sapinea</i>	< 1%	-
Dothistroma needle blight	<i>Dothistroma pini</i>	< 75%	< 25%
fire blight	<i>Erwinia amylovora</i>	< 1%	-
gall rusts of pine	<i>Cronartium</i> spp. and <i>Endocronartium</i> spp.	< 1%	-
gray mold	<i>Botrytis cinerea</i>	< 25%	-
hawthorn rust	<i>Gymnosporangium globosum</i>	< 75%	< 25%
Impatiens necrotic spot virus	-	< 1%	-
iris leaf spot	<i>Didymellina macrospora</i>	< 75%	< 25%
Kabatina blight of juniper	<i>Kabatina juniperi</i>	< 25%	-
oak wilt	<i>Ceratocystis fagacearum</i>	< 1%	-
perennial Nectria canker	<i>Nectria galligena</i>	< 1%	-
Phomopsis blight	<i>Phomopsis juniperovora</i>	< 25%	-
Phytophthora root rot	<i>Phytophthora</i> spp.	< 1%	-
pine wilt nematode	<i>Bursaphelenchus xylophilus</i>	< 1%	-
Pseudomonas blight	<i>Pseudomonas syringae</i> pv. <i>syringae</i>	< 25%	-
Pythium root rot	<i>Pythium</i> spp.	< 25%	-
Rhizoctonia root rot	<i>Rhizoctonia solani</i>	< 25%	-
Rhizosphaera needle cast	<i>Rhizosphaera kalkhoffii</i>	< 1%	-
root knot nematodes (all)	<i>Meloidogyne</i> spp.	< 1%	-
Septoria leaf spot of poplar	<i>Mycosphaerella populorum</i>	< 75%	< 25%
Septoria stem canker	<i>Mycosphaerella populorum</i>	< 1%	-
sycamore anthracnose	<i>Gnomonia platani</i>	< 75%	< 25%
tar spot of maple	<i>Rhytisma acerinum</i>	< 75%	< 25%
Thievalopsis root rot	<i>Thievalopsis basicola</i>	< 25%	-
Tomato spotted wilt virus	-	< 1%	-
Verticillium wilt	<i>Verticillium albo-atrum</i> and <i>Verticillium dahliae</i>	< 1%	-

(c) The standards published by the national plant board on September 5, 2000 and titled "U. S. domestic Japanese beetle harmonization plan" are hereby adopted by reference. A copy of this plan shall be available from the plant protection and weed control program of the Kansas department of agriculture.

K.A.R. 4-15-11. Civil penalty; complaint. A document titled a "complaint" shall initiate each proceeding for the assessment of a civil penalty. Each complaint shall include the following: (a) A general statement of the facts and the law at issue;

(b) the amount of the civil penalty that is proposed to be assessed; and

(c) notice of the respondent's right to a hearing before assessment of a civil penalty.

K.A.R. 4-15-12. Answer to the complaint. (a) Any party responding to a complaint may file a written answer. The answer shall clearly and directly admit or deny each of the factual allegations contained in the complaint. If the respondent has no knowledge of a particular factual allegation and so states, the allegation shall be deemed denied. The answer shall also state any facts or arguments that are alleged to constitute a defense and any facts that the respondent disputes and intends to place at issue.

(b) The respondent may request a prehearing conference before the presiding officer, before the actual hearing. The presiding officer may require the parties to exchange evidence or brief the legal issues. The presiding officer may impose other procedural requirements in conjunction with a prehearing conference.

K.A.R. 4-15-13. Criteria to determine dollar amount of proposed civil penalty. (a) A civil penalty of at least \$100.00 but not more than \$1,000.00 per offense may be assessed by the secretary for each violation of article 21 of chapter 2 of the Kansas statutes annotated, and amendments thereto.

(b) In determining the amount of any proposed civil penalty, the gravity of the violation shall be considered by the secretary or the secretary's designee. Factors to be considered shall include the following:

(1) The potential of the act to injure, endanger, or harm the health of any consumer, the general public, cultivated or native plant resources, or the environment;

(2) the severity of actual or potential harm or injuries;

(3) the respondent's history of compliance with K.S.A. 2-2112 through K.S.A. 2-2129, and amendments thereto, and the regulations adopted thereunder;

(4) any action taken by respondent to remedy the specific violation or to mitigate any adverse effects of the violation on public health, cultivated or native plant resources, or the environment as a result of the violation;

(5) any misrepresentation or fraud involved in the violation; and

(6) any history of violations, as identified in subsection (c) of this regulation.

(c) For each second or subsequent occurrence of a violation for which a civil penalty has been assessed within a three-year period, the civil penalty assessed for the subsequent violation shall be the maximum amount allowed by law.

K.A.R. 4-15-14. Informal settlement. (a) The respondent may request a settlement conference at any time during an administrative proceeding.

(b) The parties, upon reaching a proposed settlement, shall reduce the settlement proposal to writing and present it to the secretary in the form of a consent order.

Black Stem Rust Law

2-712. Black stem rust, legislative declaration. It is hereby declared as a matter of legislative determination that the common barberry, Berberis vulgaris, its horticultural varieties and Berberis, Mahonia and Mahoberberis are the alternate host plants of a plant disease known as black stem rust; that the plant disease, black stem rust, is caused by an organism known as Puccinia graminis which attacks wheat, oats, barley, rye and other cultivated plants and wild grasses; that the spread of said black stem rust to the agricultural crops and wild grasses of this state cause great financial loss to the growers of these crops and to the agricultural interests of this state.

2-713. Same; public nuisances. The common barberry, Berberis vulgaris, its horticultural varieties and Berberis, Mahonia and Mahoberberis (commonly known as mahonias, hollygrapes, holly barberries or Oregon grapes), are hereby declared to be public nuisances and the propagation, growth, movement or possession of said plants, including cuttings, stalks, scions, buds, fruits, seeds, or parts of plants capable of propagation, are hereby prohibited, except as herein specifically exempted.

2-714. Same; destruction and control of certain plants; barberry eradication fund. The secretary of agriculture is hereby authorized to destroy or cause to be destroyed all such plants, or parts thereof capable of propagation, wherever and whenever found, and may cooperate with other agencies and individuals within the state and with the United States department of agriculture in the removal of these plants and in the control of the black stem rust disease in agricultural crops and wild grasses. The secretary of agriculture is hereby authorized to enter into agreements with any agency of the federal government for the purpose of carrying out the common barberry eradication program. Such agreement may provide for proportionate contributions of funds for such a program and when such is the case, the agreement shall clearly state the amounts to be contributed by the federal agency and the amounts to be contributed by the Kansas department of agriculture. All funds contributed by any federal agency and the funds contributed by the Kansas department of agriculture shall be deposited in the state treasury in a fund to be known as the "barberry eradication fund," which fund is hereby created and the secretary of agriculture is hereby authorized to expend said funds in carrying out its common barberry eradication program.

2-715. Same; exemption of certain plants. Such species and varieties of the Berberis, Mahonia and Mahoberberis as have been or may be tested and designated as rust-resistant or immune by the bureau of entomology and plant quarantine, United States department of agriculture, are hereby declared to be exempt from the provisions of this act.

2-716. Same; enforcement of act. The secretary of agriculture shall supervise performance of all duties incident to the enforcement of this act, and acts amendatory thereof and supplemental thereto, and shall have the authority to inspect all premises to ascertain the presence of any of the prohibited plants and to destroy any and all such plants in accordance with the terms and provisions of K.S.A. 2-702, and amendments thereto, and they are further authorized and empowered to intercept, condemn or return to an out-of-state shipper at the shipper's expense all prohibited plants, or parts thereof capable of propagation.

2-717. Same; penalty. Any person who violates any of the provisions of this act, or acts amendatory thereof and supplemental thereto, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in the sum of not to exceed five hundred dollars (\$500) and costs.